

S.B. CIVIL WRIT PETITION NO.5459/2007

Sarju Devi and ors.

VS.

Civil Judge (SD), Parbatsar and ors.

Date : 13.12.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.AK Acharya, for the petitioners.

Mr.V Sharma, for the respondents.

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Heard learned counsel for the parties.

It appears that interim order was passed by the trial court in the suit filed by the plaintiffs/respondents after obtaining site inspection report by appointing a Commissioner who submitted the report on 12.3.2003. That interim order was continuing and on 3.2.2004, the Court did not work due to death of the Court employee and, therefore, on that day, the interim order was not extended. The plaintiffs alleged that on 19.3.2007, the petitioners with the help of large number of persons obstructed the way for which interim order was passed.

In the trial court, number of documents and affidavits were filed by both the parties and the

trial court reached to the conclusion that mere non-extension of the interim order in peculiar circumstances would not entitle the petitioners to obstruct the way which was found open as per the Commissioner's report and other evidence.

Learned counsel for the petitioners vehemently submitted that the State has constructed another way and the way which was claimed by the plaintiffs was never in existence and the petitioners have never obstructed the way. It is submitted that the stay order was not extended by the Court below, therefore, there was no restraint order against the petitioners.

I considered the submissions of learned counsel for the petitioners and perused the reasons given by the court below.

It is not in dispute that the interim order was passed by the trial court long back in the year 2003 and it continued for long and on 3.2.2004 when the Court did not function because of death of one of the employee of the Court, the stay order was not extended. In that situation, the plaintiffs rightly moved application under section 151 CPC for relief of mandatory

injunction. Even if the stay order was not extended by the Court but the petitioners were well aware that they are litigating a serious dispute about right of way wherein the Court passed an interim order and it continued and it has not been extended in above fact situation but at the same time, the stay petition was very much pending. In view of the above reason, if the petitioners have obstructed the way, they had no right to take the defence that now the plaintiffs have got another way as constructed by the State. The petitioners who are guilty of overreaching the process of the Court cannot invoke the writ jurisdiction for getting the benefit so as to overreach the process of the Court.

Consequently, this writ petition, having no merits, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya